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Muhammad El Ali v. Vitti

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4377

DONALD MUHAMMAD EL ALI,
Appellant

v.

LOUIS P. VITTI, Esquire, in his official and private
capacity; LESLIE J. CARSON, JR., Esquire, in his/her
official and private capacity; NATIONAL CITY MORTGAGE
CORPORATION, f/k/a Altegra Credit Co; THE PHILADELPHIA
SHERIFF DEPARTMENT; UNKNOWN ACTORS: JOHN AND JANE DOE;
MATTHEW CARRAFIELLO, Judge, The Court of Common Pleas
of Philadelphia; R. BARCLAY SURRICK, Judge of the District
Court for the Eastern District of Pennsylvania

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 05-cv-01823)
District Judge: Honorable Gene E. K. Pratter

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
January 19, 2007

Before: BARRY, AMBRO AND FISHER, CIRCUIT JUDGES

(Filed: February 28, 2007)

OPINION

PER CURIAM

Donald Muhammad El Ali, pro se, appeals an order of the United States District Court for the Eastern District of Pennsylvania dismissing his petition for writ of habeas corpus.

In April 2005, Muhammad El Ali filed a petition seeking relief under 28 U.S.C. § 2241, claiming that: (1) he was ejected from his property located at 1517 Tasker Street in Philadelphia, Pennsylvania, and unlawfully detained by the Philadelphia Sheriff's Department; (2) the Court of Common Pleas proceeded with a foreclosure action without proper notice to him; and (3) the lawyers representing the foreclosing party committed fraud by bringing an action on behalf of the Altegra Credit Company knowing that the company has been dissolved for years. Muhammad El Ali sought an order enjoining the state court action. Muhammad El Ali also filed a mandamus petition and request for a restraining order accompanied by a "notice of removal for writ of habeas corpus," seeking to remove the state court foreclosure action and to restrain the state court "from any further interference" with the foreclosure action.

By order entered September 14, 2005, the District Court dismissed the habeas petition with prejudice. The District Court determined that Muhammad El Ali, also known as Donald Smith, had violated the pre-filing injunction order issued on February 4, 2005, in the case of Smith v. Litton Loan Servicing, LP, et al., Civ. No. 04-02846, by submitting the habeas petition without proper leave of the Court.¹ The District Court also

¹ The pre-filing injunction is set forth in full in the District Court's memorandum opinion. The pre-filing injunction applied to Donald Smith, Donald A. Smith, Donald

held that the habeas petition had no basis in law or fact because Muhammad El Ali was not in custody and the matters alleged did not come under the purview of any habeas corpus statute. The District Court noted that the habeas petition sought to avoid a sheriff's sale of the Tasker Street property and that the matter had been previously litigated in Donald Smith ex rel. Donald Muhammad El Ali v. Altegra Credit Co., Civ. A. No. 02-08221 (E.D. Pa. Sept. 22, 2004). Muhammad El Ali timely appealed.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291. This Court is required to dismiss an in forma pauperis appeal if it is "frivolous." 28 U.S.C. § 1915(e)(2)(B)(i). An appeal is frivolous where none of the legal points is arguable on its merits. See Nietzke v. Williams, 490 U.S. 319, 325 (1989). Muhammad El Ali is not in custody and his request for relief is not cognizable under § 2241. His appeal is frivolous, therefore, and will be dismissed as such pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Appellant's motion for stay pending appeal is denied.

Muhammad El Ali or Lisa Smith.